



Federal Communications Commission
Washington, D.C. 20554

DA 07-3398
July 25, 2007
1800E3-JLB

Paxson Hawaii License, Inc.
c/o Scott S. Patrick, Esq.
Dow Lohnes
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036-6602

Re: KPXO(TV), Kaneohe, Hawaii
Facility ID No. 77483

Dear Licensee:

On May 17, 2007, Paxson Hawaii License, Inc. (Paxson), the licensee of analog television station KPXO(TV), (IND), NTSC Channel 66, and digital television station KPXO-DT, DTV Channel 41, Kaneohe, Hawaii, filed a letter requesting Commission authority to: (i) cease analog broadcasting on NTSC Channel 66 and surrender its license for the channel prior to the end of the DTV transition period; and (ii) thereafter operate KPXO-DT as a single channel, digital-only television station on DTV Channel 41. Paxson's proposal appeared on public notice on May 30, 2007.

Paxson's request was submitted pursuant to the voluntary band-clearing mechanisms adopted by the Commission to facilitate the clearing of channels 59-69. In the *Upper 700 MHz MO&O and FNRPM*,¹ the Commission established a rebuttable presumption that, in certain circumstances, substantial public interest benefits will arise from a voluntary agreement between a 700 MHz licensee and an incumbent broadcast licensee on Channels 59-69 that clears the 700 MHz band of incumbent television licensee(s). In particular, this favorable presumption attaches to any requests that: (1) would make new or expanded wireless service, such as '2.5' or '3G' services, available to consumers; (2) would clear commercial frequencies that enable provision of public safety services; or (3) would result in the provision of wireless service to rural or other underserved communities. The applicant would also need to show that grant of the request would not result in any one of the following: (1) the loss of any of the four stations in the designated market area (DMA) with the largest audience share; (2) the loss of the sole service licensed to the local community; or (3) the loss of a community's sole service on a channel reserved for noncommercial educational broadcast service.² The Commission further indicated that when this presumption is not established, or is rebutted, it would review regulatory requests by weighing the loss of broadcast service and the advent of new wireless service on a case-by-case basis.³

¹ *Upper 700 MHz MO&O and FNRPM*, 15 FCC Rcd 20845 (2000).

² *Id.* at 20870-71.

³ *Id.*

In support of its request to voluntarily vacate NTSC Channel 66, Paxson states that, while the Commission has not yet finalized allocations in the Upper 700 MHz band,⁴ KPXO(TV) is the only full power television station operating in the Upper 700 MHz band in the state of Hawaii. Thus, the proposed return of channel 66 will allow for the early provision of new services, consistent with Congress's directive that the Commission expeditiously auction this spectrum by January 28, 2008.⁵ In addition, KPXO(TV) is not one of the top four stations in the DMA.

KPXO(TV) is the sole station licensed to Kaneohe, but Paxson asserts that the entire loss area will continue to be served by no less than ten other analog and digital television stations, and as many as 22. Moreover, Paxson states that the cable and satellite penetration in the Honolulu DMA is the highest in the country, at 90%. Another important public interest factor is the fact that an earthquake in October 2006 short-circuited the analog station's RF power amplifier modules, forcing the station to cease operations.⁶ According to Paxson, it is unable to find replacement parts for the aging NTSC transmitter. Thus, in order to resume operations, Paxson must either replace the entire transmitter to restore analog service or locate another site at which to construct an analog facility. Paxson states that the State of Hawaii, which owns the Wiliwilinui Ridge site used by several broadcast stations, will not permit the transmitter expansion necessary to install a modern transmitter. Paxson also submits a letter from its landlord, which holds the lease with the State, stating that while Paxson's sublease has a provision that provides for a larger transmitter building, the landlord is unable to provide any additional space based upon its belief that expanding the building would encroach upon a public hiking trail and jeopardize the landlord's lease with the State of Hawaii. With respect to resuming analog service from an alternate site, Paxson states that due to considerable terrain issues and land use regulations on the Island of Oahu, "it is highly unlikely that [Paxson] could complete such arrangements and resume analog service much before the scheduled termination of analog broadcast service on February 17, 2009."

Based upon the foregoing, while Paxson has not met all of the factors necessary to come within the rebuttable presumption, we believe the public interest would be served by permitting Paxson to surrender its license for NTSC Channel 66 and operate digital-only operations on DTV Channel 41. Accordingly, Paxson's request IS GRANTED.

Sincerely,

Barbara A. Kreisman
Chief, Video Division
Media Bureau

⁴ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72 (released April 27, 2007).

⁵ See Deficit Reduction Act of 2005, Title III, Pub. L. No. 109-171, 120 Stat. 4 (2006).

⁶ See BLSTA-20061114ADW.